



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Document Number AMS-SC-18-0055, SC-18-330]

U.S. Standards for Grades of Apples

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is amending the U.S. Standards for Grades of Apples by removing smooth net-like russetting as a grade-determining factor in the U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1 grades for Fuji apples. In addition, AMS is removing obsolete references to the location where color standards may be examined and purchased. The changes modernize the standards and meet consumer demand by providing greater marketing flexibility.

DATES: Effective [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: David G. Horner, Agricultural Marketing Specialist, USDA, AMS, Specialty Crops Program, Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg VA, 22406; phone (540) 361-1120; fax (540) 361-1199; or, email Dave.Horner@usda.gov. Copies of the revised U.S. Standards for Apples are available at <http://www.regulations.gov> or on the AMS website at <https://www.ams.usda.gov/grades-standards/fruits>.

SUPPLEMENTARY INFORMATION: The changes exempt Fuji apples from smooth net-like russetting as a grade-determining factor. These revisions also affect the grade requirements under the Export Apple Act.

Executive Orders 12866, 13771, and 13563

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the Office of Management and Budget (OMB). Because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements in Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that

this regulation would not have substantial and direct effects on Tribal governments or significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

The current U.S. standards provide for apples to be sorted into various grades, including but not limited to U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1. Each of the grades describes the qualities required for apples to meet the standards and those that are not to be scored against certain varieties of apples when determining grade. AMS proposed amending the U.S. standards for apples so that smooth net-like russetting of Fuji apples would not be scored in any grade (*See* 84 FR 19743). Smooth net-like russetting is a cosmetic defect that affects the skin of the apple but not the internal quality of the fruit. Smooth net-like russetting, which is called flecking by the Pacific Northwest apple industry, is prevalent in the Fuji variety. U.S. apple standards restricted apples from exhibiting an aggregate area of smooth net-like russetting greater than 10 percent for U.S. Extra Fancy, 15 percent for U.S. Fancy, and 25 percent for U.S. No. 1 from meeting the grade requirements. The Export Apple Act regulations (7 CFR part 33) require that apples grade at least U.S. No. 1 or U.S. No. 1 Early (except apples for export to Pacific ports of Russia must grade at least U.S. Utility or U.S. No. 1 Hail for hail damaged apples, as specified in the U.S. Standards for Grades of Apples). Fuji apples that display smooth net-like russetting greater than the percentages allowed are therefore excluded from the export market due to current U.S. grade standards.

The Washington State Grade Standards for Apples (16 W.A.C. 403) do not consider smooth net-like russeting to be a defect for Fuji apples if the russeting does not rise above the surface of the skin and the skin is not rough to the touch. Apples grown in Washington account for nearly 75 percent of domestic production and more than 90 percent of U.S. export apples. Revising the U.S. apple standards to exclude scoring of smooth net-like russeting on Fuji apples as a quality defect, in alignment with the Washington State standards, will promote consistency across the apple market and remove barriers to the export market for growers of the Fuji variety.

In December 2016, the Northwest Horticultural Council (NHC) petitioned AMS to remove the requirement for scoring smooth net-like russeting from the U.S. Standards for Grades of Apples for the Fuji variety. In response, AMS asked the NHC to provide justification and evidence of industry support, which they did in a memorandum submitted in April 2018. The NHC provided research showing that Fuji apples have a propensity for smooth net-like russeting and that the feature does not negatively affect the internal quality of the fruit. In addition, the NHC stated that revising the U.S. apple standards would partially harmonize them with the Washington State apple standards, and help prevent sound Fuji apples from being rejected in domestic and international markets. The NHC petition was supported by the Washington Apple Commission, Idaho Apple Commission, California Apple Commission, and many other apple organizations. AMS conducted research on the proposal by meeting with Washington State and industry personnel in November 2018. Based on available data, AMS concluded that exempting Fuji apples from scoring smooth net-like russeting as a quality defect would provide the industry with greater flexibility, and align the U.S. standards with current state and industry practices.

Comments

On May 6, 2019, AMS published a proposed rule in the Federal Register (84 FR 19743) soliciting comments on removing smooth net-like russeting as a grade-determining factor from the U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1 grades for Fuji apples. In addition, AMS proposed removing obsolete references to the location where color standards may be examined and purchased. The comment period closed on July 5, 2019. Three comments were received; all supported the proposed revisions.

One commenter was an association representing 7,500 apple growers throughout America as well as more than 400 individual firms involved in the apple business. They “strongly support[ed]” the revisions as they will remove an unnecessary obstacle to U.S.-grown Fuji apples accessing the global marketplace. Another commenter representing growers, shippers, and packers in the Pacific Northwest “fully supported” the proposed revisions and “encourage[d] its swift adoption.” The third commenter was anonymous and stated that the revisions were “ideal” since the changes would prevent sound apples from going to waste.

Based on the information gathered, AMS is making the following revisions to the U.S. Standards for Grades of Apples:

- Section 51.300 U.S. Extra Fancy: Revised to exempt the Fuji variety from scoring of smooth net-like russeting as a defect.
- Section 51.301 U.S. Fancy: Revised to exempt the Fuji variety from scoring of smooth net-like russeting as a defect.
- Section 51.302 U.S. No. 1: Revised to exempt the Fuji variety from scoring of smooth net-like russeting as a defect. The revision of the U.S. No. 1 grade also will affect the U.S. No. 1 Hail (§51.302(a)) grade and the permitted combination grades (§51.304).

- Section 51.305 Color Requirements: Revised to remove obsolete references to the location where color standards may be examined and purchased.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impacts of the revision to the U.S. Standards for Grades of Apples (7 CFR 51.300-51.322). The purpose of the RFA is to structure regulatory actions such that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this regulatory flexibility analysis.

The revision will result in a minor change to the current U.S. standards to allow smooth net-like russetting of the Fuji variety of apple. There will be little or no additional cost to implement this revision.

According to the Small Business Administration (SBA) (13 CFR 121.601), the definition of a small apple producer is one whose annual sales are less than \$750,000. Based on this definition, data from the 2012 Agricultural Census show that at least 94 percent of farm operations that produce apples are considered small. These small growers will not be disproportionately affected by the rule as all changes to the standard will be applied uniformly on all market participants.

The proposal for the change to the U.S. Standards for Grades of Apples was submitted by the NHC, which represents apple growers, packers, and shippers in Washington, Oregon, and Idaho who account for 75 percent of domestic fresh apple production. This proposal was reviewed by the U.S. Apple Association and the U.S. Apple Export Council. The addition of smooth net-like russetting to the list of features that are not scorable against Fuji apples in the U.S. Standards for Grades of Apples will promote consistency in apple grading, increase U.S.

Fuji apple access into export markets, and provide for greater price stability for the Fuji variety of apples.

List of subjects in 7 CFR Part 51

Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

PART 51 – [AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621 – 1627.

2. Revise §51.300 to read as follows:

§51.300 U.S. Extra Fancy.

“U.S. Extra Fancy” consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, clean, fairly well formed, free from decay, internal browning, internal breakdown, soft scald, scab, freezing injury, visible watercore, and broken skins. The apples are also free from injury caused by bruises, brown surface discoloration, smooth net-like russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, or other means. The apples are free from damage caused by bitter pit or Jonathan spot and by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, as well as damage by invisible watercore after January 31st of the year following the year of production except for the Fuji variety of apples. Invisible watercore and smooth net-like russeting shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in table 1 of §51.305, each apple of this grade has the amount of color specified for the variety. (See §§51.305 and 51.306.)

3. Revise §51.301 to read as follows:

§51.301 U.S. Fancy.

“U.S. Fancy” consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, clean, fairly well formed, and free from decay, internal browning, internal breakdown, soft scald, freezing injury, visible watercore, and broken skins. The apples are also free from damage caused by bruises, brown surface discoloration, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, disease, insects, bitter pit, Jonathan spot, or damage by other means, or invisible watercore after January 31st of the year following the year of production, except for the Fuji variety of apples. Invisible watercore and smooth net-like russeting shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in table 1 of §51.305, each apple of this grade has the amount of color specified for the variety. (See §§51.305 and 51.306.)

4. Amend §51.302 by revising the introductory text to read as follows:

§51.302 U.S. No. 1.

“U.S. No. 1” consists of apples which meet the requirements of U.S. Fancy grade except for color, russeting, and invisible water core. In this grade, less color is required for all varieties listed in table 1 of §51.305. Apples of this grade are free from excessive damage caused by russeting which means that apples meet the russeting requirements for U.S. Fancy as defined under the definitions of “damage by russeting,” except the aggregate area of an apple which may be covered by smooth net-like russeting shall not exceed 25 percent; and the aggregate area of an apple which may be covered by smooth solid russeting shall not exceed 10 percent: *Provided*, That, in the case of the Yellow Newtown or similar varieties, the aggregate area of an apple which may be covered with smooth solid russeting shall not exceed 20 percent; and that smooth

net-like russeting shall not be scored against the Fuji variety under any circumstances. Each apple of this grade has the amount of color specified in §51.305 for the variety. Invisible watercore shall not be scored in this grade. (See §§51.305 and 51.306.)

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5. In §51.305, remove the two undesignated introductory paragraphs and add paragraphs (a) and (b) in their place to read as follows:

§51.305 Color requirements.

- (a) In addition to the requirements specified for the grades set forth in §§51.300 through 51.304, apples of these grades shall have the percentage of color specified for the variety in table 1 of this section. All apple varieties other than those appearing in table 1 of this section shall have no color requirements pertaining to these grades. For the solid red varieties, the percentage stated refers to the area of the surface which must be covered with a good shade of solid red characteristic of the variety: *Provided*, That an apple having color of a lighter shade of solid red or striped red than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of good red characteristic of the variety required for the grade. For the striped red varieties, the percentage stated refers to the area of the surface in which the stripes of a good shade of red characteristic of the variety shall predominate over stripes of lighter red, green, or yellow. However, an apple having color of a lighter shade than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of stripes of a good red

characteristic of the variety required for the grade. Faded brown stripes shall not be considered as color.

- (b) Color standards USDA Visual Aid APL-CC-1 (Plates a - e) consists of a folder containing the color requirements for apples set forth in paragraph (a) of this section and five plates illustrating minimum good shade of solid red or striped red color, minimum compensating color and shade not considered color, for the following 12 varieties: Red Delicious, Red Rome, Empire, Idared, Winesap, Jonathan, Stayman, McIntosh, Cortland, Rome Beauty, Delicious, and York. The color standards are available for purchase at <http://www.ams.usda.gov>.

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Dated: September 18, 2019.

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